

SERVED: August 11, 1999

NTSB Order No. EA-4785

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 11th day of August, 1999

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15657
v.)	
)	
MICHAEL G. DUNN,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent, pro se, has appealed from the oral initial decision Administrative Law Judge William R. Mullins rendered in this proceeding at the conclusion of an evidentiary hearing held on July 7, 1999.¹ By that decision the law judge affirmed the emergency revocation of respondent's first-class medical certificate on the ground that he does not meet the medical

¹An excerpt from the hearing transcript containing the initial decision is attached.

standards set forth in paragraphs (a)(2), (a)(3), and (b) of sections 67.109, 67.209, and 67.309 of the Federal Aviation Regulations (FAR), 14 CFR Part 67.² For the reasons discussed below, we will deny the appeal and affirm the initial decision and order of revocation.³

The Administrator's June 2, 1999 Emergency Order of Revocation alleged, among other things, the following facts and circumstances concerning the respondent:

2. On or about April 29, 1998, you had a seizure. You were transported to Baylor Medical Center—Grapevine emergency room via ambulance and admitted. While hospitalized, you received the diagnosis of a seizure.

²Paragraphs (a)(2), (a)(3), and (b) of FAR sections 67.109, 67.209, and 67.309 all provide as follows:

§ 67.[109, 209, and 309] Neurologic.

Neurological standards for a [first-, second-, or third-class] airman medical certificate are:

(a) No established medical history or clinical diagnosis of any of the following:

* * * * *

(2) A disturbance of consciousness without satisfactory medical explanation of the cause; or

(3) A transient loss of control of nervous system function(s) without satisfactory medical explanation of the cause.

(b) No other seizure disorder, disturbance of consciousness, or neurologic condition that the Federal Air Surgeon, based on the case history and appropriate, qualified medical judgment relating to the condition involved, finds—

(1) Makes the person unable to safely perform the duties or exercise the privileges of the airman certificate applied for or held; or

(2) May reasonably be expected, for the maximum duration of the airman medical certificate applied for or held, to make the person unable to perform those duties or exercise those privileges.

³The Administrator, by counsel, has filed a reply opposing the appeal.

3. You have an established medical history or clinical diagnosis of a seizure disorder of unknown origin.
4. You have an established medical history or clinical diagnosis of a disturbance of consciousness without satisfactory medical explanation.
5. You have an established medical history or clinical diagnosis of a transient loss of control of nervous system function(s) without satisfactory medical explanation of the cause.

While respondent does not on appeal deny that he suffered a seizure as alleged by the Administrator, he does dispute the allegation that the cause of the seizure is unknown or unexplained. In this connection, respondent contends here, as he did before the law judge, that the seizure must have been brought on by an antibiotic he was taking at the time for a sinus infection. Respondent did not, however, introduce any medical evidence either to support his position or to refute the abundant medical evidence the Administrator advanced to contradict it.

The Administrator's medical evidence included the testimony of a physician, John D. Hastings, who is medical board-certified in neurology and aerospace medicine. Based on his review of respondent's medical history, including the records related to his hospitalization for the seizure, it was his opinion that no adequate medical reason for the occurrence had been identified. In this connection, he explained at length and in depth the basis for his judgment, formed after extensive research and consultation with a neuropharmacologist and an epileptologist, that the seizure could not be attributed to respondent's use of

Augmentin,⁴ a prescription drug that some of the health professionals who had treated respondent speculated may have induced the convulsive episode.⁵ Given the un rebutted status of this cogent and persuasive showing, the law judge must be found to have properly determined that the Administrator had met her evidentiary burden in this proceeding.

We intend by our decision no disparagement of the logic of respondent's lay opinion that his use of Augmentin should be deemed a satisfactory explanation for the seizure, given his healthy and seizure-free life before and in the year after this incident. However, it is not enough to show that the taking of Augmentin and the seizure were coincidental.⁶ As the Administrator's expert explained, such an association, or

⁴Among other things, Dr. Hastings explained that neither component of Augmentin, amoxicillin or clavulanate, is absorbed well into central nervous system tissues or fluids, a circumstance that renders its likelihood of causing a seizure "extremely low" (Tr. at 60).

⁵These speculations appear to have reflected little more than the doctors' inability to identify, through the post-seizure tests that were performed on respondent, any other explanation for the incident. No one who treated respondent concluded that Augmentin had caused his seizure. Compare Petition of Hudson, NTSB Order EA-4761 (1999), in which the actual diagnosis of a treating neurologist of "symtomatic seizure secondary to [sulfa-type drug] Septra" was found to be an insufficient explanation for the seizure the petitioner experienced.

⁶The Physicians' Desk Reference entry on possible adverse reactions to Augmentin indicates that "[a]lgitation, anxiety, behavioral changes, confusion, convulsions, dizziness, insomnia, and reversible hyperactivity have been reported rarely." Dr. Hastings did not interpret this entry as supportive of respondent's position, and his comprehensive research into the relevant medical literature turned up no evidence that Augmentin can cause seizures. He noted, in this regard, that in his own practice as a neurologist he has no reservations "whatsoever"

simultaneous occurrence, does not mean that the drug caused the seizure. In the absence of medical evidence demonstrating that respondent's cold medication or some other identifiable factor did precipitate the event, no basis exists for overturning the Federal Air Surgeon's judgment that the respondent will pose an unacceptably high risk of recurrent convulsive activity until he has been seizure-free for four years.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The initial decision and the emergency order of revocation are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

(..continued)
about prescribing Augmentin for his seizure patients. Tr. at 56.